

EXHIBIT C

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

6 JOHN MELICHAREK, et al,

7 Defendants.
8 -----x

9 Before:

10 HON. SHIRA A. SCHEINDLIN,

11 District Judge

12 APPEARANCES

13 MICHAEL J. GARCIA

14 United States Attorney for the
15 Southern District of New York

16 BENJAMIN GRUENSTEIN

17 Assistant United States Attorney

18 PAUL J. McALLISTER

19 Attorney for Defendant Nicosia

20 JOHN N. MITCHELL

21 Attorney for Defendant Gjelaaj

22 STEVEN R. KARTAGENER

23 Attorney for Defendant Celaj

24 JOHN MARINGOLO

25 Attorney for Defendant Melacharek

SHERYL REICH

GERALD LEFCOURT

Attorney for Defendant Pipolo

ALAN NELSON

Attorney for Defendant Iuni

Also present: John Laraia, Special Agent

BY DIRECTION OF THE COURT
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07 CR 907

New York, N.Y.
October 23, 2007
2:30 p.m.

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1 Mr. Melicharek faces. Also, Mr. Melicharek is charged in all
2 four crimes that are alleged in this indictment. Mr. Pipolo is
3 charged in one.

4 I would like the opportunity to go through and
5 describe the crimes to your Honor, because I think a
6 description of that would demonstrate this defendant's danger
7 to the community.

8 THE COURT: Well, of course, your adversary in the
9 brief put in a very interesting paragraph where they charted
10 out all the cases, the recent cases in the organized crime area
11 where judges, of course, nonetheless granted bail with things
12 like murder charges and other violent charges, and you saw the
13 list just as I saw the list; the alleged boss of the Genovese
14 family, the alleged consigliere of the Bonano family, the
15 alleged Genovese acting underboss, soldiers, etc., etc. You
16 saw pages 6 and 7 was certainly a dramatic list of people who
17 have been admitted to bail.

18 MR. GRUENSTEIN: That's correct, your Honor. I'm
19 familiar with some of those cases, and, I mean, there are cases
20 on both sides.

21 THE COURT: Of course.

22 MR. GRUENSTEIN: And I think it's hard to go through
23 with a small tidbit as to what someone is charged with --

24 THE COURT: These aren't tidbits. These are no
25 people, anybody who reads the newspaper recognizes these names,

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1 as you know.

2 MR. GRUENSTEIN: As far as what they're charged with,
3 what the proof is against them.

4 THE COURT: I can't talk about the proof, I can only
5 talk about the charges. These were charges, as you know, of
6 murder and kidnapping and murder and drug distribution and the
7 rest of it. There's no doubt about it. I recall a good number
8 of these cases, which I would think you do, too.

9 MR. GRUENSTEIN: I certainly know some of them, your
10 Honor.

11 THE COURT: Right.

12 MR. GRUENSTEIN: And I know there are judges in this
13 district who have repeatedly said that someone's, the fact that
14 someone is a made member of an organized crime family is a
15 strong -- is strong evidence that they pose a danger to the
16 community. Because being in an organized crime family, they've
17 dedicated themselves to committing, to being part of a life of
18 crime.

19 Now, Mr. Melicharek, who is not Italian, is not a made
20 member of the Genovese crime family, but it's our information,
21 and we'll present this at trial, that he's a very high-ranking
22 associate, as high ranking as any non-Italian associate can be.
23 He's very close with Angelo Prisco, who is a captain in the
24 Genovese crime family. We have recorded conversations about
25 discussions of Mr. Melicharek kicking money up to Angelo

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1 Prisco. These crimes, the money that came from these crimes
2 went directly to Angelo Prisco.

3 I do want to talk about the charges here and the facts
4 of those cases, because this is a 924(c) case. There is a
5 presumption here, contrary to what Mr. Maringolo says, there is
6 a presumption there are no conditions and that's a presumption
7 set by Section 3142. Now, of course, the Court has to consider
8 it, but I think our starting point is there are no conditions.
9 Now, if Mr. Maringolo can rebut the presumption --

10 THE COURT: He didn't even think there was one.

11 MR. MARINGOLO: To us there isn't.

12 THE COURT: What do you mean to us? The law is the
13 law.

14 MR. MARINGOLO: Your Honor, he's presumed innocent as
15 he sits here.

16 THE COURT: No, no, no. That's not what presumption
17 is, you know that. There are certain charges that create a
18 presumption; that is not a condition of bail. There is a
19 presumption in this case.

20 MR. MARINGOLO: In defense to that, your Honor, the
21 FBI has made numerous visits to Mr. Melicharek over the last
22 two and a half years. These Hobbs Act robberies are from
23 September 28, 2003 and October 19, 2003, some four years ago.
24 We're not here to try the case your Honor --

25 THE COURT: I know that. But the weight of the

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1 evidence --

2 MR. MARINGOLO: But the government should know --

3 THE COURT: Excuse me. I think when I'm speaking,
4 you're supposed to stop. That's elementary. Look, I think the
5 weight of the evidence is one of the things the Court should be
6 aware of in a bail application.

7 MR. MARINGOLO: Yes, your Honor, but the government
8 should know that on September 28, 2003, at the time of this
9 Hobbs Act robbery with the supposed gun, Mr. Melicharek was at
10 his son's football game, and they should be aware of that.

11 In addition to that, your Honor, that cooperating
12 witness has been known to be around Mr. Melicharek's
13 neighborhood or area in New Jersey over the last year and a
14 half, of which the FBI have told Mr. Melicharek that he is
15 cooperating. So obviously he's not concerned. He's a pillar
16 in the community, and, Judge, when we decide on the standard
17 for the danger in the community, I think we should go to the
18 community and see what the community says about Mr. Melicharek,
19 and in this particular case, we have Clifford and Samantha
20 Rimberg, we've written two letters on behalf of Mr. Melicharek.
21 They describe him as a loving person who has helped them with
22 their house chores such as mopping up their basement and floor,
23 but most important, your Honor, the Rimbergs trust John with
24 their children and Samantha Rimberg states in pertinent part,
25 "He has played catch and cards with my children, as he has his

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1 own, and he sits with my two-year-old and plays Thomas the
2 Train. He's a kind, dependable, trustworthy friend to my
3 entire family," and these are individuals that Mr. Melicharek
4 has met later in life in 1998. They're individuals that are in
5 the community. His neighbors. They trust him with their
6 two-year-old children.

7 In addition to that, both his sons, who are here, one
8 of who has autism, the reason why they moved to New Jersey was
9 to better the life, to have better education. His other son
10 plays football, your Honor, and what does Mr. Melicharek do in
11 the community when his son's been playing football over the
12 last four years? He goes to the games and he sells hot dogs
13 and hamburgers to the members of the community at the
14 concession stand. He donates his time. And although he's not
15 a businessman, your Honor, as the prosecutor has said, he's an
16 ironworker, and he's worked 1700 hours in 2006 and he's worked
17 over a thousand hours in 2007.

18 THE COURT: Yes, I read all that in your papers.

19 MR. MARINGOLO: So I submit to the Court that he is
20 not a danger to the community, and I know the Court has read
21 all the letters.

22 THE COURT: No, I haven't, actually, because I was
23 away until last night, but I've been reading them, quickly, as
24 we've been talking.

25 MR. GRUENSTEIN: Your Honor, if I could return to the

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1 issue that your Honor posed to defense counsel. This is a
2 presumption case, it's 3142(e). As far as, I do want to get
3 back to the risk of flight --

4 THE COURT: What is the 3142(e), what is that about --

5 MR. GRUENSTEIN: That it's an offense charged under
6 924(c).

7 THE COURT: I see.

8 MR. GRUENSTEIN: He does have a bench warrant. It's
9 on his rap sheet and that is from the '95 case. So now we have
10 two things that are both confirmed in the pretrial services
11 report and his rap sheet that the defendant is now denying are
12 true. This goes back to the two issues ---

13 THE COURT: Yes, I remember at the end of the pretrial
14 services report when I asked about the bench warrant they said
15 that was a mistake. I don't know --

16 MR. GRUENSTEIN: But it is in the rap sheet. In any
17 event, that's not the focus to our argument. The focus of our
18 argument is danger to the community and risk of flight.

19 THE COURT: I want to get back to risk of the
20 community.

21 MR. GRUENSTEIN: I want to discount a lot of what
22 counsel has said about the nice things he's done in his
23 community. We're not claiming that he's someone who doesn't do
24 kind things. He has a family, he's a family man. He's not
25 causing injury to two-year-olds. I'm sure he plays catch with

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1 two-year-olds. But in the course of doing that, despite having
2 a loving family, despite having a nurturing community, he is
3 committing extremely violent crimes as part of the Genovese
4 crime family. I'd like to go through those.

5 The first one is charged in counts one and two. It's
6 a \$50,000 extortion of a company owner in Manhattan.
7 Mr. Melicharek was the primary person involved in the
8 extortion. He and other people, including Mr. Iuni, whose bail
9 application is next, went to this owner and demanded money that
10 was not due to them. They went on a number of occasions to
11 make collections. They made threats towards this business
12 owner, threats including, "Should I stab him? Can I punch him?
13 We know where you live." In addition, Mr. Melicharek, this
14 seems like maybe a small point, but it certainly scared the
15 business owner, took a pumpkin from in front of the business
16 owner and crushed it to demonstrate a threat, and discussion of
17 that is on tape, Mr. Iuni on tape reporting how Mr. Melicharek
18 did that.

19 The evidence on that count is strong. We have
20 information from the victim. We have cooperators who will
21 testify about it. We have a consensual recording in which
22 Mr. Iuni himself discusses the extortion in very explicit
23 terms. And we also have information that Mr. Melicharek of the
24 \$50,000, there were five people involved, he received \$10,000
25 and Mr. Iuni, who was beneath Mr. Melicharek in the food chain

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1 organized crime kicked up \$1,500 of his portion to
2 Mr. Melicharek. That's the first charge.

3 So despite what Mr. Maringolo says about all the kind
4 acts he does in his community, this is certainly an egregious
5 act he committed in his community.

6 Now, September of 2003. This is the robbery that
7 Mr. Maringolo said he was at his son's football game. We don't
8 dispute he was at his son's football game. He very well may
9 have been. That's not necessarily the information that we
10 have, but the point is here that Mr. Melicharek was involved in
11 setting up the robbery. He didn't actually commit the robbery.
12 He set up the robbery because he knew that the owner of the
13 residence was a business owner. He knew that the owner of the
14 residence had engaged in several large cash transactions in the
15 last month, one of which was 100,000, the other of which was
16 50,000. Mr. Melicharek knew that man and it was precisely
17 because he knew the man that he couldn't be at the robbery. So
18 if he was at his football game it doesn't undermine the proof
19 in that count.

20 Mr. Melicharek learned where the safe was in the
21 house, where the valuable coins were in the house and where the
22 guns were in the house. He conducted surveillance. He then
23 hired three people who were capable of committing violent acts,
24 three associates of organized crime, again, three Albanians who
25 did the job with Mr. Memoli. The family was at home, they were

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1 sleeping at the time. These individuals who went into the
2 house, they tied up the victim and another person, they
3 handcuffed them, they used duct tape. Mr. Memoli had a gun, he
4 pistol whipped one of the victims when the individual didn't
5 open the safe. Eventually they took \$80,000, they took
6 jewelry, they took guns and they took the coin collection. The
7 guns were ultimately recovered from Mr. Memoli's residence and
8 that's why Mr. Memoli has been in custody for the last four
9 years approximately serving a fifteen-year sentence for the
10 guns that were recovered in his house.

11 Again, the case is strong. We have recordings of
12 co-conspirators who were involved in this robbery discussing
13 the break-in. We have the victims who are ready to testify.

14 Again, this is another egregious act towards the
15 community, because Mr. Melicharek knew this individual. He
16 knew that this individual was wealthy, he knew he was a
17 business owner, and precisely for that reason, he targeted him
18 to steal his money.

19 Third, we have, this is counts three and four, as well
20 as the gun counts in count five. We have October of 2003 a
21 robbery in Orange County. Again, Mr. Melicharek knew of this
22 individual. Who was a somewhat well-known individual. He and
23 another co-conspirator thought, well, he's well known, he has a
24 cash business, he probably has cash in the house. So they
25 targeted his house to rob him. This was the robbery where

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1 Mr. Pipolo provided the guns. Mr. Melicharek was the one who
2 pulled the crew together, including the three Albanian men,
3 including Mr. Celaj, Mr. Gjelaaj and another individual and
4 Mr. Melicharek's involvement again was that he was the driver.
5 He was not actually inside the house.

6 Again, the person in the house was tied up with duct
7 tape. A fight broke out, and eventually the individuals left.

8 Again, the proof in this robbery is very strong. We
9 have the victim who is ready to testify. We have cooperating
10 witnesses. We have cell site records showing various
11 co-conspirators in the area at the time of the robbery.

12 Again, another instance where Mr. Melicharek targeted
13 a member of the community only for the reason that that person
14 was wealthy, to take that person's money. Fourth, again, very
15 strong count. This is the count only in which Mr. Melicharek
16 was charged. This is an undercover sting where a cooperating
17 witness told Melicharek about stolen goods that he had, a coin
18 collection that was worth approximately \$17,000.

19 Mr. Melicharek, who was interested in engaging in any criminal
20 activity that was presented to him, he was part of the
21 conspiracy to fence, to sell this stolen property and he did.

22 Again, it's a strong, a very strong count. We have the
23 cooperating witness, and these conversations are all recorded.
24 There's really, there's not much to that count that's left to
25 the imagination.

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1 So all of these charges are strong, and the strength
2 of the evidence is of course one factor to be considered in
3 demonstrating that the government has reinforced its
4 presumption which we do have the presumption in this case. The
5 counts, the strength is relevant because it goes to risk of
6 flight that Mr. Melicharek, if he goes to trial, of course, I
7 can't predict the future, but based on this proffer of
8 evidence, he very likely will be convicted of all the counts,
9 and the strength of evidence is important, because it shows
10 that Mr. Melicharek was involved in basically any crime that
11 presented itself to him.

12 I want to address the issue that this was 2003 or
13 2004. The government -- I don't want to speak too broadly for
14 the government, but at least my office and the agents that I'm
15 working with, I think it seems fair to say we've not been
16 investigating Rocky Melicharek, that's how he's known, John
17 Melicharek, for the last five years. What we did do, we have
18 cooperating witnesses who provided the information, we had some
19 investigation but the cooperators were then pulled out because
20 they were made into cooperators. They don't know what
21 Mr. Melicharek has been doing over the last four years, but if
22 his rap sheet which shows he's been committing crimes since
23 1990, which includes, there was a gun possession charge in
24 1990, there are two gambling charges in '95, there are these
25 charges from 2003-2004, if those are any indication, we

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1 certainly believe that the absence of evidence that he's been
2 committing crimes is certainly not, in the last three years, is
3 not telling, it's just simply a matter of we haven't been
4 investigating him in that period and our cooperators who were
5 providing information were no longer part of the organized
6 crime family during that period once they were taken out of the
7 family.

8 So for all of these reasons, we do think that we met
9 our presumption. There's nothing in Mr. Maringolo's papers, as
10 far as that he's a good family man and the like, we don't
11 dispute that, but we also don't think that that undermines the
12 presumption. I do think while I do understand that
13 Mr. Maringolo has cited several, a number of cases where
14 organized crime figures have been let out on bail, there are as
15 many on the other side, and they're all done on a case-by-case
16 basis, and all done for whatever reasons that they're done.

17 THE COURT: My only point in bringing those to your
18 attention, although you could have missed them in the brief, is
19 that people charged with very serious crimes, very dangerous
20 behavior, very violent behavior, nonetheless were admitted to
21 bail. I suppose if the Court felt that the conditions of bail
22 were adequate to insure their appearance at trial, which is all
23 that pretrial detention is about. It's certainly not advanced
24 punishment, so --

25 MR. GRUENSTEIN: No, your Honor.